

REMARKS

Claims 1, 4, 5, 11, 12 and 13 are pending in this application. By this Amendment, claim 1 is amended and claims 3 and 6-10 are canceled. No new matter is added by these amendments. Reconsideration of the application based on the above amendments and following remarks is respectfully requested.

Applicants appreciate the courtesies shown to Applicants' representative by Examiner Hobbs in the June 23, 2009 telephone interview and subsequent follow up telephone interviews. Applicants' separate record of the substance of the interview is incorporated into the following remarks.

The Office Action rejects claims 1, 3-5 and 11-13 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. As discussed during the telephone interview, claim 1 has been amended to recite, "delimits" and to recite the alternative "and/or." Accordingly, Applicants respectfully request that the rejections be withdrawn.

The Office Action rejects claims 1, 3-5 and 11-13 under 35 U.S.C. §103(a) over EP 0-259-116 to Holbrook in view of WO 2000/63668 to Taylor et al. (hereinafter "Taylor") and U.S. Patent No. 5,624,815 to Grant et al. (hereinafter "Grant").

Independent claim 1 recites a second container comprising at least one system for detecting bacteria is provided separate from a first container, temperatures T1 and T2 are applied inside the second container at an exponential growth phase of the bacteria, the temperatures T1 and T2 are applied inside the second container such that a predetermined volume of culture medium with bacteria is transferred from the first container to the second container, the temperatures T1 and T2 are maintained such that the bacteria remain viable, and the presence or absence of bacteria is determined and/or the bacteria are identified with the at least one system for detecting the bacteria in the second container.

As discussed with and agreed upon by Examiner Hobbs during the telephone interview, Holbrook, Taylor and Grant fail to disclose or suggest the combination of the above-mentioned features.

In particular, Taylor discloses a thermally controlled analytical technique such that temperature changes are used to deliver a sample to a channel with a sample delivery system such that chemical reactions may occur. Therefore, Taylor does not disclose or suggest applying a first and second temperature at an exponential growth phase of bacteria such that a predetermined volume of culture medium with bacteria is transferred from a first container to a second container with the bacteria remaining viable for detection purposes, as defined in claim 1.

On the other hand, Holbrook and Grant both disclose microbiological systems. Holbrook relates to culturing and testing mobile bacteria. However, Holbrook does not disclose or suggest applying temperature changes to a second container at an exponential growth phase of the bacteria such that a predetermined volume of culture medium with bacteria is transferred from the first container to the second container for detection purposes.

Instead, Holbrook relies on a constant temperature (see Holbrook's page 2, lines 13-15) and the motility of the bacteria for the test system to work properly. Thus, one of ordinary skill in the art would not be reasonably motivated to modify Holbrook's system with the temperature change volume transfer taught in Taylor because Holbrook's system is centred around mobile bacteria and a culture and test system suited to those types of bacteria.

Furthermore, Grant's microbiological culture system relies on the transfer of defined volumes of liquid through the wells 28 by a reduced pressure caused by a device such as a vacuum pump at a constant temperature (see Grant's Fig. 3 and col. 6, lines 23-25 and col. 7, lines 22-35). Therefore, the means of transfer disclosed in Grant occurs using a mechanical pump (i.e., vacuum pump Taylor's col. 6, line 2 or a suction pump Taylor's col. 6, line 38) and

not a temperature change to a second container at an exponential growth phase of the bacteria such that a predetermined volume of culture medium with bacteria is transferred from the first container to the second container for detection purposes, as defined in independent claim 1.

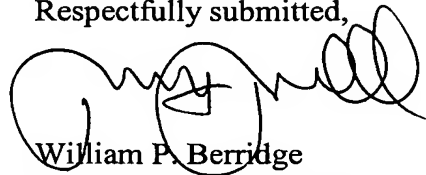
Thus, one of ordinary skill in the art would not be reasonably motivated to modify Holbrook's system with the pressure change volume transfer taught in Grant because again Holbrook's system is centred around mobile bacteria and a culture and test system suited to those types of bacteria.

Accordingly, Applicants respectfully request that the rejection be withdrawn.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



William P. Berridge
Registration No. 30,024

Rodney H. Rothwell, Jr.
Registration No. 60,728

WPB:RHR/nlp

Attachment:
Petition for Extension of Time

Date: July 30, 2009

OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>
--